

EXHIBIT B

LT. JOSEPH MURPHY
AHERN vs SIG SAUER, INC., ET AL.

August 31, 2023

1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 THOMAS R. AHERN,

4 Plaintiff,

5 VS. NO.: 1:21-cv-11007-DJC

6 SIG SAUER, INC. AND CITY OF

7 CAMBRIDGE,

8 Defendants.

9 ~~~~~

10 DEPOSITION OF LIEUTENANT JOSEPH MURPHY

11 AUGUST 31, 2023

12 9:58 A.M.

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24 Stephanie Mussen, Professional Shorthand Reporter

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1 A. I would go back to the answer I already
2 gave about the role I was in. I would seek training
3 for that role and future things.

4 Q. If you did no trainings during your time at
5 the Cambridge Police Department, if you never sought
6 out trainings like the LAPD training, you just did
7 your job, never applied for any outside trainings,
8 do you think that would be viewed negatively when
9 you were seeking advancement or have potential to be
10 viewed negatively when seeking advancement?

11 A. I'm not sure I would have a basis of
12 knowledge of -- I don't know what that -- what they
13 were expecting or what they would think was positive
14 or negative.

15 Q. What's your -- you worked with Tom for many
16 years and attended many trainings with him.

17 What was your impression of him as a
18 professional police officer?

19 A. He was a competent professional police
20 officer.

21 Q. What was your impression of him as a
22 firearms instructor?

23 A. Again, competent and professional.

24 Q. Did you when working with him have

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1 confidence in his handling of firearms?

2 A. I did.

3 Q. And what was his -- prior to the May 2019
4 discharge incident, what would you say the overall
5 view of him professionally was?

6 A. He was an excellent police officer.

7 Q. Did you hear anything after the May 2019
8 discharge incident that led you to believe that that
9 changed, that opinion changed after that incident?

10 A. Yes.

11 Q. What did you hear?

12 A. It was the day afterwards, and I heard a
13 conversation between -- I was in a room, and Sil
14 Ferreira came up and addressed Steven DeMarco and
15 Leonard DiPietro, and I was sitting in the room when
16 he addressed them about that subject.

17 Q. So this is May 20th?

18 A. Correct.

19 Q. Let me see that exhibit back. Thank you.

20 Where was this room?

21 A. It was in the third floor of 125 6th Street
22 in Cambridge.

23 Q. Is that CPD headquarters?

24 A. It is.

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1 Q. What kind of room was that?

2 A. It's a conference room similar to this but
3 larger.

4 Q. Can you describe the layout of CPD
5 headquarters just sort of floor by floor, generally?
6 What's on each floor?

7 A. I can.

8 Q. Would you?

9 A. First floor is the front lobby, and there's
10 a records room and public interfacing room right off
11 the lobby. There's the shift commander's office.
12 There's -- some subunits of support services will be
13 on the first floor. There's some storage rooms.
14 There's the front desk area. There's a report
15 writing area.

16 And then you can take the stairs halfway up
17 from -- between Level 1 and Level 2 is going to be
18 the prisoner processing detention areas, and then
19 you can go upstairs or take an elevator to the
20 second floor. On that, it's going to be operations.
21 There will be the roll-call room. There will be a
22 patrol sergeant's room. There will be a
23 report-writing area for the officers. There will be
24 break and lunchroom.

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1 There would be a patrol officer command
2 staff suite with -- that would -- kind of
3 superintendent -- three to four deputy
4 superintendents, an administrative aide, and some
5 other employee offices in there. There will be the
6 men's/women's locker room. There would be a
7 workout/gym facility.

8 Again, you can take the stairs up or an
9 elevator to the third floor, and you would have the
10 criminal investigation section. You have the
11 support services command staff being a
12 superintendent and one to two deputy
13 superintendents. Each floor will have conference
14 rooms. There will be -- at the time, there was -- a
15 special investigation unit was housed in that area
16 as well as there's -- family and social justice unit
17 is on there -- on the third floor.

18 The fourth floor up the stairs or the
19 elevator is the commissioner suite and support
20 staff. There's personnel. There's internal affairs
21 or Professional Standards, however you want to
22 address that. There's the training academy.
23 There's training rooms, conference rooms, defensive
24 tactics rooms. On either of these floors, there's

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1 all types of other rooms that have storage things,
2 whether they're armories or lockers or equipment.

3 Q. You're on the third floor because that's
4 where the Criminal Investigations Unit was?

5 A. That's correct.

6 Q. And you were in a conference room?

7 A. I was.

8 Q. Were there other people with you in the
9 conference room?

10 A. Yes.

11 Q. Who was there?

12 A. At that time that I just spoke of?

13 Q. At some point, Sil Ferreira came into the
14 room; correct?

15 A. Correct.

16 Q. Prior to him coming into the room, who was
17 in the room?

18 A. I was sitting at the head of the table
19 pretty much similar to this. Right here was the
20 Superintendent DeMarco, and sitting where I'm
21 sitting on the table is Deputy Superintendent
22 DiPietro.

23 Q. So it's you, DeMarco, and DiPietro?

24 A. Correct.

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1 Q. In the conference room?

2 A. Correct.

3 Q. Nobody else at that point?

4 A. No.

5 Q. And what are the three of you doing?

6 A. I had -- just was on the laptop, and there
7 was the case assignments, and I had done the case
8 assignments. And so just previous to that, there
9 was probably 20 to 30 people there, and I was
10 assigning cases out, and it would be on overhead
11 screens and monitors. And then we had just
12 concluded that, and everybody piled out of the room
13 and left except for the three of us.

14 Q. Okay. And this is the day after the
15 May 19th shooting incident involving Lieutenant
16 Ahern?

17 A. Correct.

18 Q. So the three of you were sitting at the
19 conference room table?

20 A. Yes.

21 Q. And the door is closed?

22 A. No. It's open.

23 Q. And Sil Ferreira comes in?

24 A. He stands in the doorway out of my line of

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1 sight.

2 Q. Okay. So why don't we do this. Could you
3 draw for me -- doesn't have to be perfectly to
4 scale, but sort of a conference room table where the
5 door is, where each person is sitting.

6 A. (Witness complying.)

7 MR. LEVITT: Make this Exhibit 2.

8 (Exhibit 2, Drawing, marked for
9 identification.)

10 MR. McKENDRY: Note for the record
11 he wrote "me" for --

12 THE WITNESS: I can change that.

13 MR. LEVITT: I know who "me" is,
14 but go ahead.

15 Q. Let's just get the -- who everybody is.
16 Actually, just go through their titles and names
17 again.

18 A. Okay. I was a sergeant detective, Joseph
19 Murphy. I had just done case assignments, and I was
20 sitting at the head of the table in the Grainger
21 room, is the name of the room, G-R-A-I-N-G-E-R.

22 Q. And with you?

23 A. Immediately to my left on the side of the
24 table was Deputy Superintendent Leonard DiPietro.

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1 Q. Okay.

2 A. The next down the table sitting where
3 Attorney McDonald is was Superintendent DeMarco.

4 Q. What -- did Deputy Superintendent DiPietro
5 have certain responsibilities at that point?

6 A. Yes, he did.

7 Q. What were those, generally?

8 A. He was the commanding officer for criminal
9 investigations.

10 Q. And what responsibilities did
11 Superintendent DeMarco have at that point?

12 A. He was the overall commander for support
13 services, which included criminal investigations and
14 other units.

15 Q. So in terms of hierarchy, DiPietro would
16 sit sort of beneath DeMarco?

17 A. Correct.

18 Q. And what was Sil Ferreira's sort of title
19 at that point?

20 A. He was a lieutenant in Professional
21 Standards or internal affairs.

22 Q. And does that come under the auspices of
23 either DeMarco or DiPietro or both, or it sits
24 separately?

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1 MR. MCKENDRY: Objection.

2 A. It's designed to sit separately.

3 MR. MCKENDRY: You can answer.

4 A. Sorry. If you had the organization flow
5 chart, Professional Standards would have its own
6 direct line from the commissioner's office to there
7 and back up, and that's who they report to.

8 Q. Okay. And that's to maintain -- why is
9 that?

10 A. For integrity of internal affairs and
11 Professional Standards oversight.

12 Q. You're sitting at the table. So Lieutenant
13 Ferreira -- is that the right way to pronounce it?

14 A. Yes.

15 Q. Lieutenant Ferreira comes to the door, and
16 you can't see him because he's standing outside the
17 door, and where you're located here in Exhibit 2,
18 he's outside of your sight line?

19 A. Correct.

Q. But by this drawing, it appears that he could look in the door and see DeMarco and DiPietro?

22 A. Correct.

23 Q. And did you hear Sil Ferreira say
24 something?

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1 A. Yes.

2 Q. What did you hear him say?

3 A. He said, oh, I got you both together, and
4 then he said, I just came from a meeting upstairs,
5 and we're going to find Tom Ahern in violation of
6 policy and procedures.

7 Q. What happened next?

8 A. Superintendent DeMarco turned from him to
9 me, and he says, oh, it's good that you're here. He
10 goes, finish your reports and find him in violation.

11 Q. Who said that?

12 A. Superintendent DeMarco.

13 Q. And when he said, finish your reports and
14 find him in violation, who did you understand he
15 meant by "him"?

16 A. Thomas Ahern.

17 Q. And at that point, had you been assigned --
18 had you been previously assigned to conduct the
19 investigation of Tom Ahern's discharge on May 19th,
20 2019?

21 A. Yes.

22 Q. Who assigned you to do that?

23 A. At the time, it was Deputy Superintendent
24 Robert Lowe.

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1 Q. So what did you say, if anything, when
2 DeMarco told you to find Tom Ahern in violation?

3 A. I said, you can't do that, sir.

4 Q. What happened next?

5 A. He said, let me make it easy for you. I'm
6 ordering you to find him in violation.

7 Q. What was said after that?

8 A. I said, you can't do that, sir.

9 Q. What was said after that?

10 A. He said, fine. Finish your reports, give
11 them to the deputy superintendent, and you find him
12 in violation. And when it was "you," he was talking
13 to Deputy Superintendent DiPietro.

14 Q. Okay. Who spoke after that?

15 A. Deputy DiPietro.

16 Q. What did he say?

17 A. Fine. I'll find him in violation.

18 Q. What was said after that and by whom?

19 A. So Ferreira stepped into the room and said,
20 oh, I didn't know you were here, talking to me.

21 Q. Okay. What was said after that?

22 A. I said, for point of conversation, what are
23 we finding him in violation of?

24 Q. And who responded to that, if anyone?

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1 A. Superintendent DeMarco.

2 Q. What did he say?

3 A. He said -- he paused for a bit, and he
4 goes, we'll do excessive force.

5 Q. Okay. Did anybody say anything in response
6 to that?

7 A. I said, you can't find somebody in
8 violation of the excessive force policy when they
9 weren't using force on anyone.

10 Q. Okay. Did he respond to that, or did
11 anyone respond to that?

12 A. I'm sure there was a group conversation at
13 that point. I can't remember particulars.

14 Q. After you told him -- after you told
15 DeMarco you can't find someone in violation of
16 excessive force policy when he didn't exert
17 excessive force on somebody, do you remember how
18 long you all remained in the room after that?

19 A. It wasn't a comfortable situation, so it
20 wasn't going to be that long.

21 Q. Okay. Why wasn't it a comfortable
22 situation?

23 A. Well, you have a command-level officer
24 being told by a subordinate that he's not going to

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1 do what they asked him to do and what he ordered him
2 to do.

3 Q. Because you were not agreeing to do what
4 was -- what you were ordered to do?

5 A. I could not do what I was ordered to do.

6 Q. And why not?

7 A. Well, at the very least, it's unethical,
8 and at the worst, it could be illegal.

9 Q. Can you explain why that is?

10 A. It's predetermining an outcome of an
11 investigation. It goes against the sanctity of the
12 criminal justice system.

13 Q. At that point, the day after the shooting,
14 you had done some level of investigation, would you
15 say?

16 A. Yes.

17 Q. What sort of level of investigation had you
18 done at that point?

19 A. Preliminary.

20 Q. And what does that -- what did that entail?

21 A. It would -- documenting the situation, how
22 I was there, who was there, and any initial
23 statements from those people, collecting any
24 evidence that has to do with the investigation,

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1 documenting that information, photo imaging anything
2 that was there, meaning photograph, and basically,
3 the initial intake at a scene. I treated it as a
4 scene.

5 Q. Did you tell DeMarco that the investigation
6 was not finished?

7 A. Yes.

8 Q. What did he say?

9 A. To finish my reports.

10 Q. Meaning finish -- whatever you've done
11 already, finish your reports?

12 MR. McKENDRY: Objection.

13 Q. What did you understand he meant by that?

14 A. I can't say what he meant.

15 Q. What does finish -- how do you take it?
16 What was your --

17 A. What was my intent?

18 Q. When he said "finish your reports," what
19 did you think he was asking you to do?

20 A. I think he was telling me to write reports,
21 and I don't know what he was telling me.

22 Q. Well, you said earlier he said, finish your
23 reports and find him in violation; right?

24 A. I did.

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1 Q. Okay. So what do you recall -- I
2 understand the meeting didn't last long after you
3 refused to do that.

4 Do you recall any further conversation --

5 A. No.

6 Q. -- than what you've recounted today?

7 A. No.

8 Q. At that point in 2019, how long have you
9 been involved in criminal investigations?

10 A. As a supervisor or as a detective?

11 Q. Both.

12 A. Sixteen, 17 years.

13 Q. Thousands of investigations?

14 A. Yes.

15 Q. Did you ever have anything like that happen
16 to you prior to that day?

17 A. Could you clarify?

18 Q. In your 16, 17 years conducting thousands
19 of investigations, did you ever have a
20 superintendent tell you to find a violation before
21 you finished your investigation?

22 A. No.

23 Q. You described it earlier as sort of a
24 predetermined outcome?

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1 A. Yes.

2 Q. Did you ever have a superior officer prior
3 to that date instruct you to do -- conduct an
4 investigation which in your view had a predetermined
5 outcome?

6 A. No.

7 Q. So after you refused DeMarco's order to
8 find Tom Ahern in violation for excessive force and
9 he turned to Deputy Superintendent DiPietro and
10 said, fine, you find him in violation to DiPietro,
11 what did DiPietro say in response?

12 A. I'll find him in violation.

13 Q. Did you say anything at that point in
14 response to that?

15 A. No.

16 Q. Why not?

17 A. It wasn't my place to say anything further.

18 Q. I mean, you said that this, in your view,
19 was --

20 A. Well, actually, let me go back for a
21 second. After that, that's when I said, just for
22 conversation purposes, or somehow I segued it that
23 way, what are we finding him in violation of?

24 Q. And that's when it got to excessive force?

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1 A. Correct.

2 Q. And then you said you can't find him in
3 violation of excessive force; he didn't use
4 excessive force on another person?

5 A. Correct.

6 Q. What was the response to that?

7 A. I think that it was conversation between
8 the two of them on what -- and maybe involving
9 Lieutenant Ferreira as far as what they were going
10 to find him in violation of.

11 Q. Do you remember generally how that
12 conversation went?

13 A. I don't. I would have to say that I was
14 sliding out the doors at that point.

15 Q. That's because it was an uncomfortable
16 situation?

17 A. It could be described that way, yes.

18 Q. So when you left your -- the three of them
19 were talking about what they were going to find Tom
20 in violation of?

21 A. I don't have -- I can't say what they
22 talked about when I left.

23 Q. No. I'm not asking you to say what they
24 talked about after you left. I was recounting your

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1 outside the chain of command?

2 A. Yes.

3 Q. And were you concerned that that also would
4 be viewed negatively in terms of your career with
5 the Cambridge Police Department?

6 A. Yes.

7 Q. When Sil Ferreira said at the beginning of
8 this discussion in the Grainger room when he said a
9 decision -- I'm glad I found the two of you here to
10 DeMarco and DiPietro, a decision has been made
11 upstairs; is that right? Is that what he said?

12 A. Yes. I just came from a meeting upstairs.

13 Q. Okay.

14 A. And we're going to find Tom Ahern in
15 violation.

16 Q. What did you understand or how did you
17 interpret his reference to a meeting upstairs?

18 A. That Professional Standards with or without
19 the commissioner made the determination to find him
20 in violation of a policy and procedure.

21 Q. Because upstairs includes both the
22 commissioner suite and the Professional Standards
23 suite?

24 A. Correct.

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1 Q. So Sil Ferreira was a lieutenant in
2 Professional Standards.

3 Can you give me the sort of hierarchy in
4 Professional Standards at that time?

5 A. I believe there would be an admin person.
6 There would be an officer or a detective assigned
7 for background investigations. There would be two
8 sergeants. There would be a lieutenant, and there
9 was an attorney that ran -- still runs Professional
10 Standards.

11 Q. So the lieutenant was Sil Ferreira?

12 A. Correct.

13 Q. Do you recall who the two sergeants were?

14 A. Yes. One was Phil McDavitt, and the other
15 one, I would have to look at my phone to get his
16 last name.

17 Q. Maybe when we take a break, you could do
18 that for us.

19 A. Sure.

20 Q. Do you recall who the detective was?

21 A. But that's different side within that
22 organization. That's background investigations.

23 Q. Got you. Okay. So thank you for that
24 clarification.

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1 Q. You're good?

2 A. I am.

3 Q. So when did you get there?

4 A. I'm estimating 10 a.m., maybe.

5 Q. Okay. And this was in the -- say, the
6 Harvard Square area of Cambridge?

7 A. Yes.

8 Q. And what was your role there?

9 A. I had a squad of detectives, and we were
10 responsible -- if there was any criminal offenses
11 that occurred, we would do follow-up investigations.

12 Q. At some point, did you become aware of a
13 firearm discharge involving Lieutenant Ahern?

14 A. Yes.

15 Q. How did you become aware of that?

16 A. Deputy Lowe -- at the time, he was a deputy
17 superintendent -- called me.

18 Q. What did Deputy Superintendent Lowe say?

19 A. Told me to report to him. He was a short
20 distance away, and I went up to him.

21 Q. Did you have a conversation with him?

22 A. I did.

23 Q. Can you recount that conversation?

24 A. He said that Tom Ahern's firearm discharged

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1 in one of the SWAT vehicles. We were standing next
2 to it, and he wanted me to conduct a line
3 investigation.

4 Q. Conduct a what?

5 A. Line investigation.

6 Q. What's a line investigation?

7 A. Internally, there's two forms of
8 investigations. There's a line investigation and
9 there's an internal affairs investigation. And when
10 something happens, whether it could be a car crash
11 or involving an officer or somebody hurt or any
12 range of things, the first thing that kicks in is a
13 line investigation.

14 And that is the investigation would
15 proceed, and that's where we'll use an example of an
16 officer is involved in a crash with another motor
17 vehicle. That person would conduct the line
18 investigation, and they can make a determination if
19 it was like an avoidable accident or was it out of
20 policy or against procedure, but they would do the
21 investigation.

22 Q. So Deputy Superintendent Lowe assigned you
23 to do the line investigation?

24 A. Yes.

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1 Q. At that point in your career, how many line
2 investigations had you been the primary on, more or
3 less?

4 A. More than five.

5 Q. Okay. More than 10?

6 A. It could be, I mean, because it would
7 involve use of force. It would involve car crashes.
8 It would involve some other things, but, you know,
9 not a lot.

10 Q. Okay.

11 A. Not like criminal investigations.

12 Q. Would you say somewhere between five and
13 15?

14 A. Okay. I could agree to something like
15 that.

16 Q. Now, that's primary. Were you also
17 involved in some line investigations in more of a
18 support role?

19 A. No.

20 Q. So the way you said a line investigation,
21 sort of the -- you're investigating to determine you
22 said if it was avoid -- if something was avoidable
23 or out of policy?

24 A. Correct.

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1 Q. And if you conduct an investigation -- let
2 me ask you, how long does it typically take to
3 conduct a line investigation? Can you give me a
4 range of how those investigations go in your
5 experience?

6 A. So it depends on the subject matter of the
7 investigation.

8 Q. Yeah.

9 A. A car -- an officer versus -- if they
10 struck somebody in a crosswalk with their cruiser,
11 then that wouldn't take me too long to conduct a
12 line investigation.

13 Q. So if you're trying to determine if it was
14 you said out of policy, meaning violated Cambridge
15 Police Department policy?

16 A. A line investigation, yes, that's what the
17 purpose is, within policy or out of policy.

18 Q. And if you determine after your
19 investigation -- if your conclusion is that it's out
20 of policy, what happens next?

21 A. You forward that up the chain of command.

22 Q. Have you ever -- in your five to 15 line
23 investigations, have you ever concluded that a
24 particular incident was -- an officer was acting out

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1 of policy?

2 A. Yes.

3 Q. It gets sent up the chain of command?

4 A. Correct.

5 Q. In those instances, what happens after
6 that, in your experience?

7 A. I don't have any experience what happens
8 after that.

9 Q. For example, as you said, there's a line
10 investigation versus an internal affairs
11 investigation. If you conclude that something is
12 out of policy, in your experience, does that then go
13 to internal affairs?

14 A. It's not a triggering event, no.

15 Q. So you send it up the chain of command and
16 whatever happens happens?

17 A. My understanding of the whole process when
18 you become a supervisor and they train you on that
19 is, the line investigation goes up. So as the
20 patrol officer or the detective, something occurs.
21 There's a line investigation. The next higher-level
22 person conducts that line investigation, and they
23 find within policy, out of policy, or neutral area.

24 I mean, I'm being very vague because of the

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1 range. They sign off, and then it goes up to the
2 next level. In this case, it would go to a
3 lieutenant. They would agree with the findings or
4 disagree with the findings. Then they would send it
5 up, and it would go to a deputy superintendent, and
6 it goes up the rank just like that.

7 Q. Does it go all the way to commissioner?

8 A. In training, yes, things would go to the
9 commissioner, but for minor offenses, I don't know
10 the answer.

11 Q. In terms of when you were trained on these
12 investigations, it would go all the way up the chain
13 to the commissioner?

14 A. For something like this, yes.

15 Q. For something like this being Lieutenant
16 Ahern's discharge?

17 A. Correct.

18 Q. Would at that point you be notified of
19 whether your recommendation -- your conclusion has
20 been validated, accepted?

21 A. No.

22 Q. So once you send it up, do you hear
23 anything more about it typically from an official
24 perspective?

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1 A. No.

2 Q. You might hear about what happened through
3 the grapevine?

4 A. Correct.

5 Q. But your role is essentially done once you
6 send it up?

7 A. Correct.

8 Q. And in your training and experience, what
9 separates something going to a line investigation
10 versus an internal affairs investigation?

11 A. Culpability for criminal offenses would
12 kick it into internal affairs.

13 Q. When you say "culpability for criminal
14 offenses," I mean, the investigation hasn't taken
15 place yet, so do you mean an allegation of criminal
16 activity would kick something into an internal
17 affairs investigation?

18 A. Yes, it would.

19 Q. So if the allegation, for example, is that
20 a police officer is shaking down drug dealers, that
21 would go to internal affairs?

22 A. Yes.

23 Q. Or conducting home invasions, that would go
24 to internal affairs?

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1 A. Correct.

2 Q. Car accident would go to a line
3 investigation?

4 A. Correct.

5 Q. An accidental discharge would go to a line
6 investigation?

7 A. Correct.

8 Q. What are some of the other things you
9 experienced that go to line investigation either
10 directly or through your training?

11 A. A use of force kicks in right away with a
12 line investigation, so the next-level supervisor
13 conducts that. It's a line investigation.

14 Q. Any use of force automatically kicks it in?

15 A. Documentable use of force, so I mean,
16 what -- do you want to get down to the weeds with
17 this?

18 Q. No, I don't. Other examples?

19 A. Of line investigations?

20 Q. Yeah.

21 A. Civilian complaints can be -- start as a
22 line investigation and remain all the way as a line
23 investigation.

24 Q. So when Deputy Superintendent Lowe assigned

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1 you to conduct the line investigation of Lieutenant
2 Ahern, did you say anything to him about that at
3 that time?

4 A. I did.

5 Q. What did you say?

6 A. I questioned him. I said, you want me to
7 do the investigation on my direct report supervisor?
8 I said, it's normally the next higher rank.

9 Q. Meaning -- you said normally the next
10 highest rank, meaning someone who was one rank
11 higher than lieutenant?

12 A. Correct.

13 Q. How did Deputy Superintendent Lowe respond?

14 A. He looked at me and said, I'm asking you to
15 conduct the investigation.

16 Q. What, if anything, did you say?

17 A. Yes, sir.

18 Q. Did you have any further conversation with
19 Deputy Superintendent Lowe at that time?

20 A. About that?

21 Q. Let's start with that. About that.

22 A. No.

23 Q. About anything else?

24 A. Later in the morning.

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1 Q. Okay. After Deputy Superintendent Lowe
2 assigned you to conduct the line investigation, what
3 did you do?

4 A. I went straight over to the SRT vehicle
5 where the discharge occurred.

6 Q. In the five to 15 line investigations that
7 you had previously conducted, were any of those of
8 an officer who held a higher rank than you?

9 A. No.

10 Q. Were any of those of your direct report?

11 A. No.

12 Q. Were those all of officers that were below
13 you in terms of the hierarchy?

14 A. Yes.

15 Q. What was your basis for telling Deputy
16 Superintendent Lowe that normally it's -- you don't
17 do a line investigation of your -- of a superior
18 officer or your direct report; it's -- usually the
19 person who conducts it is one higher in the
20 hierarchy? What was your basis for knowing that?

21 A. Normal procedure.

22 Q. Had you been trained on that?

23 A. Yes.

24 Q. In your entire time at the Cambridge Police

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1 Department, other than this one incident, have you
2 ever been asked to conduct a line investigation of a
3 superior officer?

4 A. No.

5 Q. Have you ever heard of anybody else being
6 asked to conduct a line investigation of a superior
7 officer?

8 A. The only thing I'm aware of is a lateral
9 rank on a car accident.

10 Q. Okay. That's lateral, not superior?

11 A. Correct.

12 Q. Not a direct report?

13 A. Correct.

14 Q. How long did it take you to get from where
15 you were with Deputy Superintendent Lowe to SRT
16 vehicle, approximately?

17 A. Here to the end of the table.

18 Q. You conducted the investigation -- well,
19 you reported to the scene, and then why don't you
20 tell me what you saw.

21 A. I treated it as a scene that I would
22 process like any scene.

23 Q. Okay. What does that mean?

24 A. So I want to identify who are my potential

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1 entity that would objectively examine it and make a
2 determination.

3 Q. Because state police is more about
4 ballistics?

5 A. State police is more about ballistics.

6 Q. And BPD would be ballistics?

7 A. Ballistics.

8 Q. Have you sent firearms to an independent
9 lab in the past?

10 A. Not for this, no.

11 Q. So you go to retrieve the firearm. You
12 want to take photos of it, document it, go to --
13 your plan is go to DiPietro and request it be sent
14 to an independent lab. You go to the evidence room
15 for the firearm, and what happens?

16 A. I was told by an evident tech that the
17 firearm was not in evidence. It was taken out.

18 Q. Who was that evidence tech?

19 A. Kevin McGrath.

20 Q. What did you do at that point?

21 A. I asked him who took my evidence out.

22 Q. What did he say?

23 A. Deputy Superintendent O'Connor.

24 Q. Was that unusual to you?

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1 A. Yes.

2 Q. What did you do -- what did you do when you
3 found out that Deputy Superintendent O'Connor had
4 taken your evidence?

5 A. When you're a professional investigator,
6 you -- your chain of evidence is critical, and so
7 yes, I was upset that a person that wasn't in the
8 investigation, to my knowledge, was taking evidence
9 that I logged in. You get possessive and you think
10 of it as your evidence.

11 Q. So when you found that out, what did you
12 do?

13 A. At some point after that, I did have a
14 conversation with Deputy O'Connor.

15 Q. And what did you say to Deputy O'Connor?

16 A. I asked him why he took my evidence.

17 Q. What did he say?

18 A. That it was not my concern.

19 Q. Was anybody else present during that
20 conversation?

21 A. No.

22 Q. Where was it?

23 A. In the hallway, third or fourth floor.

24 Q. After he told you that it was none of your

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1 concern, what, if anything, did you say?
2 A. Nothing.
3 Q. Was he your superior?
4 A. No. He is a superior officer.
5 Q. Superior officer, but not in your chain of
6 command?
7 A. That's correct.
8 Q. Okay. You look like you wanted to say
9 something else.
10 A. He could tell me and give me an order, and
11 I would have to obey it, a lawful order.
12 Q. Superior officer, you got to obey him.
13 He's just not in your chain of command?
14 A. Correct.
15 Q. What was his area of responsibility at that
16 time?
17 A. We're getting into a time and I don't know
18 which title he had. He was a deputy superintendent.
19 Q. Let me ask you, so I understand that you
20 don't recall how long after the incident it was that
21 you went to retrieve the firearm, and that can
22 impact maybe what Deputy Superintendent O'Connor's
23 role was.
24 Do you think that this was within a month

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1 of the incident that you went to do this?

2 A. It could have been, yes.

3 Q. I know it could have been.

4 A. I can't recall.

5 Q. Okay. Do you believe it was within two
6 months of the incident? And look, just --

7 A. I don't recall.

8 Q. -- so you understand, I don't want you to
9 say a time period that you don't know. Okay? I'm
10 not trying to get you to do that, but I'm trying to
11 see if we can narrow the time frame down.

12 It wasn't a year later; correct?

13 A. It was not a year later.

14 Q. Would you say it was within a couple months
15 of the shooting?

16 A. That would be my belief.

17 Q. When Deputy Superintendent O'Connor told
18 you it was none of your concern, do you recall what
19 his sort of -- he was not in your chain of command.
20 What was his area at that time?

21 A. He was a member of the command staff.

22 Q. Okay. How many deputy superintendents were
23 there at that time?

24 A. I wouldn't be able to tell you that without

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1 Q. Did you complain to anyone that Deputy
2 Superintendent O'Connor had taken your evidence?

3 A. No.

4 Q. Why not?

5 A. I'm not sure who I would complain to.

6 Q. Well, you could go to the commissioner;
7 right? He's above Deputy Superintendent O'Connor in
8 the food chain. You can go to the commissioner and
9 say, this isn't right. Deputy Superintendent
10 O'Connor is interfering with my investigation. You
11 could do that; right?

12 A. A person could do that, yes.

13 Q. And I take it that's not something you
14 would do or you didn't do?

15 A. I did not do that.

16 Q. Why not?

17 A. That's not -- would not have been a
18 comfortable avenue to take.

19 Q. We all have to do things in life that
20 aren't comfortable sometimes; right?

21 A. Maybe comfortable is not the correct word.

22 Q. Yeah. I mean, why didn't you go complain
23 to the commissioner?

24 A. Because I didn't.

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1 Q. I understand you didn't and that it
2 wouldn't be comfortable.

3 Why wouldn't it be comfortable?

4 A. I did not believe that it would be fruitful
5 or constructive.

6 Q. Okay. So it might not work?

7 A. Correct.

8 Q. Okay. But you never know until you go?

9 A. Correct.

10 Q. So do you think it would have been a bad
11 career move?

12 A. I don't think it would have been a good
13 one.

14 Q. Why is that?

15 A. It was -- the administration at the time,
16 it would not have been good for me to go see the
17 commissioner and express my displeasure that
18 evidence of an investigation that I was assigned was
19 removed.

20 Q. Because the administration at the time
21 what? Do you want to take a break and talk to your
22 lawyer?

23 MR. McDONALD: We can do that.

24 THE WITNESS: And I'd like to use

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1 the facilities, too.

2 MR. LEVITT: Why don't we take
3 five.

4 (Brief recess.)

5 Q. So, Lieutenant Murphy, we're talking about
6 why you didn't go to Commissioner Bard and complain
7 that Deputy Superintendent O'Connor had taken your
8 evidence, and you said it would not be comfortable
9 or fruitful.

10 You tell me -- now that you've had some
11 time to reflect on it, why you didn't do that?

12 A. I don't believe that Deputy O'Connor would
13 have gone to evidence, taken an item out of evidence
14 without the commissioner's knowledge.

15 Q. Okay. You still had the option of going to
16 the commissioner and saying, I don't know if you
17 knew or not, but this happened, and I disagree with
18 it because this is my investigation and that's my
19 evidence, and, you know, taking it out of evidence
20 can disrupt the integrity of the investigation; you
21 did have that option?

22 A. I did.

23 Q. You didn't take it?

24 A. I did not.

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1 Q. Do you think that that is one of the
2 reasons why you didn't do that, because you felt
3 that that would be a bad career move?

4 A. I do.

5 Q. Just so it's clear, one of the reasons why
6 you did not go to the commissioner was that you
7 believed that that would have been a bad career
8 move?

9 A. Correct.

10 Q. What was it -- you started to say in one of
11 your answers that at that time -- I can't remember
12 if you referred to the command staff or the
13 administration, but you were going to say something
14 about the administration at that time called the
15 Bard administration and you stopped yourself. What
16 were you going to say?

17 A. I just believe it would have been futile to
18 go to Commissioner Bard at that time to question him
19 about why Deputy O'Connor took the gun out of
20 evidence.

21 Q. Yes, I understand that. You've said that,
22 but then you were going to say something. You said
23 the administration at that time, and then you
24 stopped. So you were going to say something about

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1 Superintendent O'Connor about this?

2 A. I did.

3 Q. Where did that conversation take place?

4 A. Somewhere in the building.

5 Q. Was anybody else present?

6 A. I don't believe so.

7 Q. What led to that conversation?

8 A. If you're in investigations, you have a
9 case queue, so it's a database that you're always
10 checking. Cases get statuses. They're either open.
11 They can be closed. They can be adjudicated. They
12 can be cleared, exceptionally cleared. And you
13 periodically go through your cases to clear cases
14 out of that queue.

15 This was post the gun being taken out of
16 evidence, and I had stopped doing anything further
17 after that point, and then I wanted to just clear
18 this out of my case queue. And so I went up to him
19 and confronted him and said, is criminal
20 investigations section done as far as this is
21 concerned? And he said, yes. And I said, is it
22 going to be internal affairs? And he said, yes.
23 And I wrote this report, and I had a supervisor
24 review it and sign off on it.

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1 Q. So if this report is dated October 25th,
2 2019, that at least -- that gets us to the point
3 where we can say that the incident that you referred
4 to earlier where Deputy Superintendent O'Connor took
5 the gun, your evidence, out of evidence occurred
6 prior to the date of this report?

7 A. Correct.

8 Q. After when Deputy Superintendent O'Connor
9 took the gun out of evidence, was your investigation
10 ongoing at that stage?

11 A. Yes, it was.

12 Q. And after he took the firearm from
13 evidence, did you continue your investigation?

14 A. No.

15 Q. Why not?

16 A. Because the investigation circled around
17 that firearm.

18 Q. Okay. So what was your purpose in
19 confronting Deputy Superintendent O'Connor about the
20 status of the investigation?

21 A. I wanted to clear that out of my case
22 queue. I wanted it documented that I had nothing to
23 do with that investigation after that fact.

24 Q. Why did you want that documented?

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1 A. Because the chain of evidence, and the
2 investigation wasn't -- it wasn't my investigation.
3 The evidence was removed.

4 Q. Did you at this point in your investigation
5 have any reason to refer it to Professional
6 Standards yourself?

7 A. No.

8 Q. Am I correct that in the course of a line
9 investigation, you could, in theory, develop
10 evidence that would lead you to refer a matter to
11 Professional Standards?

12 A. I have to back up on the last question.
13 While I was writing the original report on May 19th,
14 Sil Ferreira and Phil McDavitt came into my office.
15 They're assigned to internal affairs, and I at that
16 point said, are you taking this investigation as an
17 internal affairs so I can stop right now? And they
18 said, no. Continue what you're doing.

19 Q. That --

20 A. That would be the only thing where I did
21 offer it and say, are you taking this away? But did
22 I refer it to internal affairs? No.

23 Q. Right. They came into your office. This
24 was on May 19th?

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1 A. On May 19th.

2 Q. So Sil Ferreira and McDavitt --

3 A. McDavitt.

4 Q. -- came into your office and said, are you
5 taking this?

6 A. Yes.

7 Q. You weren't referring it to them; you were
8 asking if they were taking it?

9 A. Correct.

10 Q. And they said no?

11 A. Correct.

12 Q. Did they report to the scene of the
13 discharge?

14 A. Not while I was there, if they did.

15 Q. Was that unusual for them to come down to
16 your office like that?

17 A. Those two, yes, that's unusual.

18 Q. Did you have any further conversation with
19 them at that time?

20 A. They would ask me -- as I was typing away
21 and cataloging evidence and uploading the photo
22 images, they would periodically ask me questions
23 about it, the incident.

24 Q. So this is the day of the incident?

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1 A. It is.

2 Q. You're in the middle of your investigation?

3 A. Yes.

4 Q. Preliminary investigation at this point?

5 A. Yes.

6 Q. Categorizing the evidence and writing up
7 your reports of your interviews?

8 A. Yes.

9 Q. Sil Ferreira and McDavitt --

10 A. Yes.

11 Q. -- come down to your office, start asking
12 you questions about your investigation?

13 A. Yes.

14 Q. And how many years have you been with the
15 CPD?

16 A. Twenty-seven, 28.

17 Q. And in your 27 years with the CPD, has that
18 ever happened before?

19 A. No.

20 Q. What do you recall them asking you?

21 A. I don't recall specifics. It would be just
22 bullet item questions, and they would want answers.

23 Q. Can you give an example?

24 A. I can't.

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1 Q. But it was your recollection is it was
2 bullet item questions about the incident?

3 A. It was.

4 Q. And about your investigation to date?

5 A. It was.

6 Q. Did you ask them why they wanted to know?

7 A. I reiterated asking them if they want the
8 investigation.

9 Q. And they said no?

10 A. Correct.

11 Q. Did you ask them why they were questioning
12 you about it?

13 A. We went back and forth like that, yes.

14 Q. What did you say?

15 A. At one point, I said, I'm trying to write
16 my report. Can you leave?

17 Q. What, if anything, did Ferreira or McDavitt
18 say?

19 A. McDavitt said, well, we could do this
20 upstairs. We know how comfortable you are up there.

21 Q. What did you interpret the reference to
22 upstairs being?

23 A. It was -- the month before, there was an
24 internal affairs investigation on a different

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1 person, and I was called in as a witness, and it was
2 not a comfortable interview.

3 Q. That was in the internal affairs
4 Professional Standards Unit suite on the fourth
5 floor?

6 A. Yes.

7 Q. Upstairs?

8 A. Yes.

9 Q. How did you respond to that statement by
10 McDavitt? What did you say?

11 A. I said, fuck you, Phil.

12 Q. What did he say?

13 A. And I stood up. I said, get out of my
14 office.

15 Q. What happened next?

16 A. They got out of my office, and I closed the
17 door.

18 Q. Did they both leave?

19 A. Yes.

20 Q. Do you recall any of the other conversation
21 between the three of you that day in your office?

22 A. No. It was just -- it was just asking
23 questions when you're trying to type and categorize
24 and write a report.

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1 A. No.

2 Q. Are you aware of any of them being
3 investigated by Professional Standards?

4 A. I was not told.

5 Q. You don't know?

6 A. I don't know.

7 Q. Do you know if Dave Albert's shooting was
8 investigated by Professional Standards?

9 A. Actually, that was, yes.

10 Q. How do you know?

11 A. Because he received a five-day suspension.
12 Yes, I did know about his.

13 Q. What about Jacques Desrosiers'?

14 A. I don't know what the status of that is.

15 Q. Who else do you know was involved in an
16 accidental shooting discharge?

17 A. With this weapon?

18 Q. Any weapon.

19 A. I do know years past there's been a couple
20 where -- different situations but where people have
21 been chasing somebody with their weapon out and then
22 trip and fall and stuff, and the weapon goes off.
23 There's a couple of those over the years.

24 Q. Do you remember any of those being

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1 A. Matter of fact. He says, you're here. He
2 goes, finish your reports and find him in violation.

3 Q. The entire time?

4 A. When I -- if you want to call it pushback
5 about finding someone in violation before an
6 investigation is complete, his tone would be -- it
7 would be safe to say that it would have some
8 frustration.

9 Q. Okay. What about DiPietro? What was his
10 tone during this entire reaction?

11 A. Level.

12 Q. I'm sorry?

13 A. He was just level.

14 Q. Okay. How about Sil Ferreira?

15 A. That's -- the only interaction we had was
16 he made a statement, and he turned and said, oh, I
17 didn't know you were in the room.

18 Q. His tone, was it level?

19 A. It was -- I didn't know that you were in
20 the room, just like that.

21 Q. Didn't sound angry, heated, sarcastic,
22 anything like that?

23 A. No.

24 Q. Did Sil Ferreira say anything about asking